

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

UNITED STATES OF AMERICA, :  
                               :  
                               :  
                               PLAINTIFF, :  
                               :  
                               :  
                               v. : CIVIL ACTION NO. 2:05cv1086-W  
                               :  
                               :  
EIGHTY THOUSAND SIX HUNDRED :  
THIRTY-THREE DOLLARS :  
(\$80,633.00) IN UNITED STATES :  
CURRENCY; :  
FOUR THOUSAND EIGHT HUNDRED :  
SEVENTY-EIGHT DOLLARS :  
(\$4,878.00) IN UNITED STATES :  
CURRENCY; AND, :  
THIRTY-SIX THOUSAND FIVE :  
HUNDRED DOLLARS (\$36,500.00) :  
IN UNITED STATES CURRENCY, :  
                               :  
                               :  
DEFENDANTS. :  
                               :

MOTION TO STRIKE COUNTER-CLAIM

The United States of America (United States), by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and John T. Harmon, Assistant United States Attorney, hereby respectfully moves to strike the Counter-Claim filed by Claimants Michael Coleman and Jacquard Merritt and states as follows:

1. On February 21, 2006, Claimants Coleman and Merritt filed an "Amended Answer and Counterclaim". Within the Counter-Claim the Claimants asserted conversion, outrage and false imprisonment as "Causes of Action".
2. The United States moves to strike the Counter-Claim on the grounds listed below.

3. The present action is in rem not in personam and makes no claim directly against Coleman and Merritt. Accordingly, there is no claim to counter and the counterclaim is a nullity. See U.S. v. \$68,000, 927 F.2d 30, 34-35 (1<sup>st</sup> Cir. 1991)<sup>1</sup>. An alleged counterclaim brought in a civil forfeiture proceeding is not properly a counterclaim. U.S. v. \$10,000.00 in U.S. Funds, 863 F.Supp. 812, 816 (S.D. Ill. 1994). See also U.S. v. Assorted Computer Equipment, 2004 WL 784493 (W.D. Tenn, Jan. 09, 2004, No. 03-2356V) (copy attached).

4. The Counter-Claim should also be stricken because a suit against the United States or any agency or officer thereof "must allege both the basis for the court's jurisdiction and a specific statute containing a waiver of the government's immunity from suit". \$10,000, 863 F.Supp. at 815.

5. Coleman and Merritt allege jurisdiction under "the Fourth, Fifth and Fourteenth Amendments to the United States Constitution", but nowhere do they cite a specific statute waiving the United States immunity from suit. Due to this failure, the Counter-Claim should be stricken.

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<sup>1</sup>In \$68,000, the claimant was attempting to recover property which was not the subject of the forfeiture action. Note 7, in \$68,000 appears to allow possible jurisdiction to "replevy the property within the contours of the government's forfeiture action." This is contrary to 21 U.S.C. §881 which states that property taken under that section is not repleviable.

Respectfully submitted this 1<sup>st</sup> day of March, 2006.

FOR THE UNITED STATES ATTORNEY  
LEURA G. CANARY

/s/John T. Harmon

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Bar Number: 7068-II58J

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2006, I electronically filed the foregoing Motion to Strike Counter-Claim with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Joe Morgan Reed.**

/s/John T. Harmon

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